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10/629,887

07/29/2003

Brian Broussard

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09/14/2005

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EXAMINER

TRAN, KHOI H

ART UNIT

PAPER NUMBER

3651

DATE MAILED: 09/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/629,887

Applicant(s)

BROUSSARD ET AL.

Examiner

Khoi H. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) 8,9,23 and 24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 17-22, 25-28, 30-32, 36, 38-42 and 44 is/are rejected.
- 7) ☒ Claim(s) 10-16, 29, 33-35, 37, 43 and 45 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

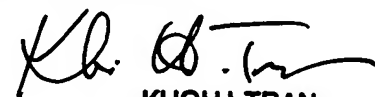
- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 07/05.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.


KHOI H. TRAN
PRIMARY EXAMINER

DETAILED ACTION

Election/Restrictions

1. In response to the argument that Applicant is "entitled to a reasonable number of species claims", there is no provision within the MPEP for such entitlement. For Applicant's information, if claims are directed to different species and the generic claim(s) is not allowable, then the claims are properly restricted under Species Requirement. In addition, Applicant has failed to clearly admit on the record and submit evidence or identify such evidence of record showing the species to be obvious variants per MPEP 809.02 (a).

In response to Applicant's inquiry of the withdrawn claims 9 and 24, claims 9 and 24 are directed to the metering device that includes valve 156/158 (Figure 15, Species IV). The elected Species I, instead, uses rotating blades as metering means. The two types of metering devices are different than one another, see page 18 of the specification.

The requirement from the previous Office actions are still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application

by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1, 4-7, 17, 20-22, 25-28, 30-32, 36, and 44 are rejected under 35 U.S.C. 102(e) as being anticipated by Culbert 6,377,648.

In regards to claims 1 and 4-7, Culbert '648 discloses a device per claimed invention. The device comprises a device a housing and a lower plurality of blades 30/40/50 (Figure 2) cooperating to define an exit aperture from said housing. The lower plurality of blades carried within the housing in a movable manner with respect to one another so as to enable the size of said exit aperture to be varied for singulating articles falling through said exit aperture. The device comprises a metering device 30 for controlling an entry aperture into the housing. The center of the entry aperture and a center of the exit aperture are offset from one another. The device comprises a separation device that includes a guide 46.

In regards to claim 17, Culbert '648 discloses a singulating device per claimed invention. The device comprises a housing having an entry aperture and an exit aperture, a metering device 30 carried by said housing and controlling said entry aperture. The device comprises a lower blade 50 carried within said housing and set off

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from said upper metering device to define a chamber there between, said lower blade controlling the exit aperture. The device comprises a metering device 30 for controlling an entry aperture into the housing. The center of the entry aperture and a center of the exit aperture are offset from one another. The device comprises a separation device that includes a guide 46.

In regards to claim 25, Culbert '648 rotors 40 and 50 constitute the lower blades.

In regards to claim 26, Culbert '648 rotors 30 and 40 constitute the upper blades.

In regards to claim 32, Culbert '648 rotor comprises friction-increasing material for the entire assembly.

In regards to claim 36, Culbert '648 element 20 constitutes a container.

3. Claims 17, 20-22, and 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Benarrouch 5,549,217.

Benarrouch '217 discloses a singulating device per claimed invention. The device comprises a housing having an entry aperture and an exit aperture, a metering device (top blades 3, Figures 9-14) carried by said housing and controlling said entry aperture. The device comprises a lower blade (lowest blade 3, Figures 9-14) carried within said housing and set off from said upper metering device to define a chamber there between, said lower blade controlling the exit aperture. The device comprises a metering device for controlling an entry aperture into the housing. The center of the entry aperture and a center of the exit aperture are offset from one another. The device comprises a separation device that includes a guide channel.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2, 3, 18, 19, 38-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Culbert 6,377,648 in view of Bartur 6,263,259.

Culbert discloses all elements per claimed invention as explained in paragraph 4 above. However, it is silent as to the specifics of the RFID tag carried by the device.

Bartur '259 discloses a singulating device for prescriptions. The device comprises unique RFID tag. The device comprises a memory device for storing information. The information includes a bit that is set to a first state when an article storage container is connected to the device and is set to a second state when the article storage container is detached from the device. Bartur '259 teaches that RFID tag provides remote monitoring and inventorying for the device. Bartur '259 also shows of the commonly well known memory for storing information.

In regards to claim 2, 3, 18, and 19, it would have been obvious for a person with ordinary skill in the art, at the time the invention was made, to have provided Culbert '648 device with RFID tag because it facilitates remote monitoring and inventorying for the device, as taught by Bartur '259.

In regards to claim 38, 39, 40, and 41, it would have been obvious for a person with ordinary skill in the art, at the time the invention was made, to have provided to

Culbert '648 device with a commonly well known memory because it facilitates the storing of information, as shown by Bartur '259.

In regards to claim 42, Bartur '259 implicitly includes a clock for timely dispensing procedures.

Allowable Subject Matter

6. Claims 10-16, 29, 33-35, 37, 43, and 45 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

7. Applicant's arguments filed 07/28/2005 have been fully considered but they are not persuasive.

Applicant argued that Culbert 6,377,648 rotors 30, 40, and 50 are not blades. This argument is not persuasive. It is the Office's position that each rotor of Culbert '648 constitutes a blade. Per the online Compact Oxford English Dictionary, the term "blade" is interpreted to be "the broad flat part of an oar, leaf, or other object". The rotors 30, 40, and 50 of Culbert '648 comprise flat parts. Hence, the rotors are blades. Applicant has failed to provide any structural distinctions between the claimed blades and Culbert '648 rotors/blades.

Applicant argued that the rotors in Culbert '648 do not cooperate to define an exit aperture but rather cooperate to define a path through the device. This argument is not persuasive. It is the Office's position that the path through the device would include an exit opening/aperture.

Applicant argued that Benarrouch 5,549,217 does not contain blades. This argument is not persuasive. Per the interpretation of "blade" as explained above, Benarrouch '217 in fact comprises plurality of blades per the claimed invention. Benarrouch '217 blades cooperate to define a path through the apparatus. Hence, said path would include an exit opening/aperture.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

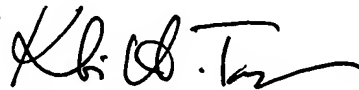
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoi H. Tran whose telephone number is (571) 272-6919. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Khoi H Tran
Primary Examiner
Art Unit 3651

KHT
09/12/2005